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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92043152
Party	Plaintiff ARTURO SANTANA GALLEGO
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Attachments	Petitioner's Opposition to Strike Final.pdf (4 pages)(201405 bytes)

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9 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
10 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

11 ARTURO SANTANA GALLEG0,

12 Petitioner,

13 vs.

14 SANTANA'S GRILL, INC.

15 Registrant.

Cancellation Nos.: (Consolidated)

92043152

92043160

92043175

**PETITIONER'S OPPOSITION TO
MOTION TO STRIKE AND
MOTION FOR RELIEF**

1 Petitioner Arturo Santana Gallego hereby opposes the Registrant's Motion to
2 Strike the Trial Brief of Petitioner and request relief from any default.

3 The testimonial period close on May 15, 2008. The Petitioner's Trial Brief
4 was sent via overnight mail on July 14, 2008 and was filed on July 15, 2008.
5 Registrant claims that the Trial Brief was late, and should have been filed on July
6 14, 2008 instead of July 15, 2008. Registrant claims no prejudice from what it
7 argues is a one-day delay in filing the Trial Brief. In this case, Petitioner's counsel
8 incorrectly believed that she could electronically file the Trial Brief and planned to
9 do so on July 14, 2008. However, due to the size of the filing, along with the
10 corresponding documents, Petitioner's counsel was unable to effectively scan and
11 load the documents in order to file them electronically. Petitioner's counsel then
12 sent the filing via overnight mail.

13 "It is within the Board's discretion to permit a party to reopen an expired time
14 period where the failure to act is shown to be due to excusable neglect." Seattle
15 Pacific Indus., Inc. v. Brieland Professional Graphics, Ltd., 1997 TTAB LEXIS 42,
16 45 U.S.p.Q. 2d (BNA) 1478 (citing Pioneer Investment Services Company, v.
17 Brunswick Associates Limited Partnership, 507 U.S. 380 (1993) and Ariola-
18 Eurodisc Gessellschaft Mit Beschränkter Haftung v. Eurotone International Ltd.,
19 175 U.S.P.Q. 250 (TTAB 1972).) In Seattle Pacific Industries, supra, the attorney
20 misunderstood and miscalculated the time to file the trial brief and filed the trial
21 brief five days late. Id. Nevertheless, the Board denied the motion to strike, finding
22 that the explanation showed that the delay was not willful, the delay had a negligible
23 impact on the proceedings and there was no evidence that the other party had been
24 harmed. The Board also observed that "it benefits the Board in its ability to make a
25 just determination of the case to have the briefs of both parties of record."

26 Similarly, in this case, the delay has been explained, was not willful and was
27 extremely short. Registrant suffered no harm whatsoever by the one day delay.
28

1 Petitioner respectfully requests that the Board deny the Motion to Strike in its
2 discretion, so that it may decide the matter on its merits.

3
4 Dated: August 28, 2008

The Armenta Law Firm APC

5
6 By: 
7
8 M. Cris Armenta

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 11900 Olympic Boulevard, Suite 730, Los Angeles, California 90065.

On August 28, 2008 I served the following document(s) described as:

(1) PETITIONER'S REPLY BRIEF

(2) PETITIONER'S OPPOSITION TO MOTION TO STRIKE AND MOTION FOR RELIEF


on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Michael Sandstrum, Esq.
BREMER WHYTE BROWN & O'MEARA, LLP
20320 S.W. Birch Street, 2ND Floor
Newport Beach, California 92660
Facsimile: 949 221-1001

☒ BY MAIL: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service that same day in the ordinary course of business. Such envelope(s) were placed for collection and mailing with postage thereon fully prepaid at Los Angeles, California, on that same day following ordinary business practices. (C.C.P. § 1013 (a) and 1013a(3))

I declare under penalty of perjury under the law of the United States of America that the above is true and correct and that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on August 28, 2008 in Los Angeles, California.


Heather Rowland